

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE  
LITIGATION

THIS DOCUMENT RELATES TO ALL  
CLASS ACTIONS

MDL NO. 1456  
CIVIL ACTION NO. 01-CV-12257-PBS  
Judge Patti B. Saris

Chief Magistrate Judge Marianne B. Bowler

**DECLARATION OF KATHLEEN M. O'SULLIVAN IN SUPPORT OF  
DEFENDANT IMMUNEX CORPORATION'S MOTION FOR  
PROTECTIVE ORDER REGARDING MAY 17, 2006, DEPOSITION  
NOTICE**

I, Kathleen M. O'Sullivan, duly declare as follows:

I am a partner at the law firm of Perkins Coie LLP, in Seattle, Washington, representing Immunex Corporation ("Immunex").

1. As of the December 3, 2005, discovery cut-off, I was not aware of any outstanding document issues that plaintiffs had with Immunex.
2. On May 18, 2004, in a telephone call, plaintiffs' counsel cancelled the Immunex 30(b)(6) depositions that had been scheduled for May 25-27, 2004. Plaintiffs'

counsel stated that they wanted to review additional Immunex documents before proceeding with the depositions.

3. My partner, David J. Burman, and I agreed with plaintiffs' counsel, Sean R. Matt, to conduct the Immunex depositions noted on November 7, 2005, after the December 3 cut-off, given that the notice had been served prior to the cut-off, the short time between the notice and the proposed deposition dates, and witness availability problems, which were enhanced by the fact that these witnesses were located around the country and had not been employed by Immunex since 2002, at the most recent.

4. I located the former Immunex employees whose depositions were noted on November 7, 2005, and cooperated with Mr. Matt in scheduling these depositions. Plaintiffs went forward with four of these depositions: Michael Ambielli, Ann Kerner (former Reimbursement Manager), Kathleen Stamm (former Director Health Care Policy), and Sigrid Schreiner (former Senior Manager for Reimbursement Strategy and Health Care Policy).

5. I also located the former Immunex employees whose depositions were noted on February 6, 2006, and – after initially objecting to these depositions – cooperated with plaintiffs' counsel in scheduling them, given Mr. Matt's representation that these depositions were relevant to the cases filed by the States of Montana and Nevada. To date, three of these depositions have occurred (Joyce Golden, former Director, Sales Operations; Jean Luc Frande, former National Accounts Manager; and Mike Preberowsky, former Senior Director Trade Relations) and two are currently scheduled to occur in June (Kurt Miller, former Regional Sales Manager, and Bob Bettencourt, former Vice President of Sales). During a deposition on March 21, 2006, Ms. Golden was questioned in great detail about the Immunex call notes database and she addressed the issue exhaustively.

6. The witnesses noted on February 6 and on May 17 are also former Immunex employees and they are located around the country.

7. On May 24, 2006, I held a meet and confer telephone conference with plaintiffs' counsel, Robert F. Lopez. I explained why the notice was untimely and asked for plaintiffs' position as to how the notice could be timely. Mr. Lopez explained plaintiffs' position that, currently, there is no discovery cut-off applicable to Track Two discovery and that Judge Saris has "tacitly" agreed that discovery of Track Two defendants may continue. Plaintiffs' counsel also explained that they believe the individuals listed on the May 17 deposition notice are "pretty important to the case." Mr. Lopez and I agreed that we needed the Court to resolve the parties' dispute as to whether these depositions were timely noted and necessary.

Executed this 26th day of May, 2006.

/s/ Kathleen M. O'Sullivan  
Kathleen M. O'Sullivan

**CERTIFICATE OF SERVICE**

I hereby certify that on May 26, 2006, I caused a true and correct copy of the Declaration of Kathleen M. O'Sullivan in Support of Defendant Immunex Corporation's Motion for Protective Order Regarding May 17, 2006, Deposition Notice to be served on all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending a copy to LexisNexis File and Service for posting and notification to all parties.

By /s/ Kathleen M. O'Sullivan  
Kathleen M. O'Sullivan